

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CIVIL CASE NO. 1:21-cv-00213-MR-WCM**

MYRON WAYNE BODTKER,)
Plaintiff,)
vs.) ORDER
WALMART, INC.,)
Defendant.)

THIS MATTER is before this Court on Defendant's Motion to Dismiss [Doc. 54]; the Magistrate Judge's Memorandum and Recommendation [Doc. 60] regarding the disposition of that motion; and Plaintiff's Objections to the Memorandum and Recommendation [Doc. 61].

Pursuant to 28 U.S.C. § 636(b) and the standing Orders of Designation of this Court, the Honorable W. Carleton Metcalf, United States Magistrate Judge, was designated to consider Defendant's motion and to submit a recommendation for its disposition.

On September 12, 2023, the Magistrate Judge filed a Memorandum and Recommendation in this case containing conclusions of law in support of a recommendation regarding the partial motion to dismiss. [Doc. 60]. The

parties were advised that any objections to the Magistrate Judge's Memorandum and Recommendation were to be filed in writing within fourteen (14) days of service. Plaintiff timely filed Objections on September 25, 2023, [Doc. 61], and Defendant filed its Reply to those Objections on October 9, 2023. [Doc. 62].

After careful consideration of the Memorandum and Recommendation and Plaintiff's Objections thereto, this Court finds that the Magistrate Judge's proposed conclusions of law are correct and consistent with current case law. Plaintiff's Objections, to the extent relevant, assert that the Magistrate Judge erred in recommending dismissal of his Title VII retaliation claim based on the lack of temporal proximity between the filing of this litigation and the termination of his employment. Plaintiff contends that his protected activity encompasses his participation in this litigation, which is ongoing, rather than his mere filing of this action. [See Doc. 61 at 2]. As the Magistrate Judge aptly explained, Plaintiff's contention is incorrect, as it is Plaintiff's activity as of the filing date that is relevant. [See Doc. 60 at 12-13]. Accordingly, this Court hereby overrules Plaintiff's Objections and accepts the Magistrate Judge's Recommendation that the motion to dismiss should be granted.

IT IS, THEREFORE, ORDERED that Plaintiff's Objections to the Memorandum and Recommendation [Doc. 61] are **OVERRULED**; the Memorandum and Recommendation [Doc. 60] is **ACCEPTED**; Defendant's Motion to Dismiss [Doc. 54] is **GRANTED**; and Plaintiff's Title VII retaliation claim against Defendant is hereby **DISMISSED WITH PREJUDICE**.

IT IS SO ORDERED.

Signed: November 6, 2023



Martin Reidinger
Chief United States District Judge

